IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

OP.No. 8897 of 1998(H)

PETITIONER:

C.O.JANAKI (DIED)
W/O.LATE M.KUNHANANDAN NAIR, PERUMACHERRY.P.O. KOLACHERRY

ADDL.PETITIONERS 2 AND 3 IMPLEADED.

ADDL.P2. C.O.GEETHA, W/O.HARIKRISHNAN, OTHAYATH HOUSE
PERUMACHERRY, P.O.KOLACHERRY.

ADDL.P3. C.O.USHA, W/O. UNNIKRISHNAN, DO. DO.

IMPLEADED AS PER ORDER DT. 23/10/2000 IN CMP.49002/2000

BY ADV. SRI.P.RAVINDRAN

RESPONDENTS:
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1. THE DIRECTOR OF PUBLIC INSTRUCTION, THIRUVANANTHAPURAM.

2. THE ASST. EDUCATIONAL OFFICER, TALIPARAMBA SOUTH, KANNUR DIST.

3. C.P.PUSHPAVALLY, W/O.GOVINDAN MULLAKANDY, DEEPA NIVAS,
KOLACHERRY, KANNUR DISTRICT.

ADDL.R4 IMPLEADED.

ADDL.R4. M.GOVINDAN, S/O.K.M.KAMMARN NAIR, 'DEEPA NIVAS', KOLACHERYP.O.
KANNUR DISTRICT.
IMPLEADED AS ADDL.R4 AS PER ORDER DT. 31.3.06 IN IA.4951/06

BY ADV. SRI.T.R.RAVI
SRI.R.K.MURALEEDHARAN
GOVT.PLEADER SRI.V.T.K.MOHANAN
SRI.P.K.SURESH KUMAR

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD
ON 22/9/2006 AND 2/4/2007, THE COURT ON 23/05/2007 DELIVERED THE
FOLLOWING:

CLOSED.

23/5/2007 .SD/- A.K.BASHEER, JUDGE.

APPENDIX

EXT.P1: TRUE COPY OF JUDGMENT IN SA.534/92.

EXT.P2: TRUE COPY OF ORDER DT. 10/5/96.

EXT.P3: TRUE COPY OF REQUEST

EXT.P4: TRUE COPY OF JUDGMENT IN OP.31111/97 DT. 19/2/97.

EXT.P5: TRUE COPY OF ORDER DT. 28/4/97.

EXT.P6: TRUE COPY FO REQUEST DT. 20/5/97.

EXT.P7: TRUE COPY OF ORDER DT. 26/9/97.

EXT.P8: TRUE COPY OF JUDGMENT IN OP.17295/97.

EXT.P9: TRUE COPY OF JUDGEMNT IN WA.2291/97

EXT.P10: TRUE COPY OF ORDER DT. 29/4/98.

RESPONDENTS' EXHIBITS:

AS PER COUNTER OF R3:

EXT.R3(A): TRUE COPY OF AGREEMENT DT. 23/11/97.

EXT.R3(B): TRUE COPY OF ORDER DT. 5/5/98.

AS PER IA.4664/2005:

ANNEXURE R3(A): TRUE COPY OF ORDER IN CMP.14997/98.

ANNEXURE R3(B): TRUE COPY OF ORDER IN CMP.34096/2001.

AS PER IA.13982/2005

EXT.R3(A): TRUE COPY OF ORDER IN CMP.14997/98.

EXT.R3(B): TRUE COPY OF ORDER IN CMP.34096/2001

EXT.R3(C); TRUE COPY OF ORDER IN IA.4139/2004.

A.K. Basheer, J.

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O.P. No. 8897 of 1998-H

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Dated this the 23rd day of May, 2007.

J U D G M E N T

The three gentlemen who founded Kolacherry Upper Primary School way back in the year 1938 might not have ever thought that their kins would choose the school premises as a battle ground for a never ending fight over the right of its management. After the death of the founders, the school properties were jointly held by their successors viz., Kunhanandan Nair, Govindan and Sreedharan. In the year 1974 Sreedharan released his right in the property in favour of his two brothers viz., Kunhanandan Nair and Govindan who continued in co-ownership thereafter. Sri.Kunhanandan Nair had been functioning as the Manager, since Govindan who was a teacher in the school was disabled from discharging the duties and functions of Manager. While so, in the year 1987, Govindan executed a registered gift deed releasing his half right in the school properties in favour of his wife Smt.Pushpavally, respondent No.3 herein.

2. It appears that in the year 1977 more than a decade prior to execution of the gift deed, Kunhanandan Nair and Govindan had entered into Ext.R3(a) agreement, by which it had been agreed that after the death of Kunhanandan Nair the right of management of the school would be transferred in the name of Govindan, or in the event of any difficulty to do so, it would be transferred in the name of Smt.Pushapavally, his wife. The above agreement became the subject matter of a civil suit instituted by Govindan and his wife Smt.Pushpavalli, before the Munsiff's Court, Kannur as OS.424/87

seeking to restrain Kunhanandan Nair from transferring managership of the school to anybody other than the plaintiffs in the suit. To make a long story short, the civil suit attained finality in this Court in SA.No.534/94. It is on record that Kunhanandan Nair passed away during the pendency of the Second Appeal. This Court took the view that the suit had become infructuous on the death of Kunhanandan Nair as the prayer in the plaint was for a personal relief against Sri.Kunhanandan Nair. However it was made clear by this Court that the question relating to the right of management of the school was being left open to be decided before a proper forum. A true copy of the judgment in the Second Appeal is on record as Ext.P1.

3. After the dismissal of the Second Appeal, the dispute was taken up before the departmental authorities. By Ext.P5 order dated April 30, 1997 the Assistant Educational Officer, Taliparamba South, accepted the claim of the petitioner, the widow of late Kunhanandan Nair, to be the manager of the school. This order was set aside by the Director of Public Instruction in Ext.P7 order and it was directed that respondent No.3 be approved as the Manager.

4. The above order passed by the Director was challenged by the petitioner before this Court in OP.17295/97. While setting aside the order of the Director, this Court issued a direction to the Assistant Educational Officer to take a fresh decision in the matter in accordance with law. A copy of the above judgment rendered by a learned Single Judge of this Court has been produced as Ext.P8. In Writ Appeal the above direction was modified and the Director of Public Instruction was directed to decide the issue. It was thereafter that Ext.P10 order was passed by the Director rejecting the claim of the petitioner for the

right of management. The Director held that respondent No.3 is the rightful claimant for the post of Manager. The said order is under challenge in this Original Petition.

5. It is pertinent to note that this Original Petition has been pending before this Court since 1998. Initially the operation and implementation of Ext.P10 order was stayed by this Court in CMP.14997/98. However on June 10, 1998 this Court passed a modified order as hereunder, after hearing learned counsel for the parties.

> "When the matter came up for hearing, counsel on either side agreed that an interim order can be passed on the following lines. It is agreed by parties that third respondent would function as Manager for a period of three years from 1/6/98 to 31/3/2001. It is also agreed that petitioner would function as Manager from 1.4.2001 for a period of three years.
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> In view of the abovesaid agreement, there will be a direction to the second respondent to approve the appointment of the 3rd respondent as Manager from 1/6/98 to 31/3/2001. Needless to say on the basis of the agreement, second respondent has to approve the appointment of the petitioner also for a of three years from 01/04/2001."

6. It is not in dispute that respondent No.3 had been functioning

as the Manager of the school since April 1, 2004 in terms of the above order issued in IA.4139/04 in CMP.14779/98. Thus petitioner and respondent No.3 had been functioning as Manager on a rotation basis for a term of 3 years each since 1998.

7. As mentioned earlier, this Court while disposing of the Second Appeal had left open the issue relating to the right of management to be decided by the appropriate authority. It is true that the genuineness of Ext.R3(a) agreement cannot be questioned or disputed by the petitioner now, since the above issue has been finally settled in the civil suit mentioned earlier. But the fact remains that the competent authority has to decide whether petitioner had lost the right of management of the school once and for all in view of the above agreement. It is beyond controversy that late Kunhanandan Nair did have co-ownership right in the properties of the school till his death. He was in management too at the time of his death. In Ext.P10 order the Director held in favour of respondent No.3 on the sole ground that Sri.Kunhanandan Nair had enjoyed the right of managership of the school for nearly 17 years till his death. It was only for that reason the Director held that respondent No.3 ought to be given her piece of cake. The observations contained in Ext.P8 judgment had not been adverted to or considered by the Director, respondent No.1, while passing Ext.P10 order.

8. Having heard learned counsel for the parties and having perused Ext.P10 order and other materials on record, I am satisfied that the impugned order is liable to be quashed. I do so. Respondent No.1 shall take a fresh decision in the matter, in the light of the observations contained in Exts.P8 and P9 judgments of this Court. In the meanwhile,

petitioner shall be allowed to discharge the duties and functions of Manager till a final decision is taken by respondent No.1. The competent authority shall issue appropriate orders to the above extent approving the appointment of the petitioner as Manager. It is made clear that appointment of the petitioner as Manager is only provisional and subject to the final decision to be taken by respondent No.1. Appropriate orders in this regard shall be passed by the Assistant Educational Officer, Taliparamba South within 10 days. Respondent No.1 shall take a final decision in the matter as expeditiously as possible at any rate within 4 months from the date of receipt of a copy of this judgment. Needless to mention that petitioner and respondent No.3 shall be afforded sufficient opportunity to be heard before final orders are passed.

A.K. Basheer
Judge.

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